

APPEAL NO. 021283
FILED JUNE 27, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 26, 2002. The hearing officer determined that the appellant's (claimant) compensable right shoulder, forehead contusion, and right elbow contusion injury did not include injury to the lumbar area, cervical area, to both knees, rheumatoid arthritis, right hip, or to the right wrist and that the claimant's impairment rating is six percent.

The claimant appeals contending that his compensable injury does include all the asserted body parts, citing his treating doctor's report and claiming that the hearing officer did not give sufficient weight to his evidence. The respondent (carrier) responds, asserting that the claimant's appeal was not timely and failed to appeal all the findings which have become final. Otherwise the carrier urges affirmance.

DECISION

Affirmed.

Addressing the carrier's contentions on timeliness and procedural issues of the claimant's appeal, applying Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)) the claimant's deemed receipt of the hearing officer's decision is April 27, 2002. Applying Section 410.202, as amended, and Rule 143.3 (c) the claimant's appeal must have been mailed no later than May 17, 2002, and received by the Texas Workers' Compensation Commission (Commission) no later than May 24, 2002. The claimant's appeal was mailed May 17, 2002, and was received by the Commission on May 21, 2002. Regarding the carrier's concern that "the Appeals Panel is left to speculate as to what date [claimant] mailed his appeal" we consider the U.S. postmark as controlling as to the date mailed. We have early on held that failure by an appellant to properly serve the respondent does not affect the timeliness of the appeal, but only delays the inception of the time allowed for the respondent to reply. Texas Workers' Compensation Commission Appeal No. 92051 decided April 30, 1992. The carrier's position is without merit.

On the merits, the claimant, a math teacher, tripped and fell over a chair on _____. The carrier accepted, and the parties stipulated, that the claimant sustained a compensable right shoulder impingement, forehead contusion, and right elbow contusion injuries. It is relatively undisputed that the claimant had rheumatoid arthritis in his knees and right shoulder for several years prior to _____, and a doctor had recommended total knee replacement surgery for both knees prior to the date of injury. How severe the rheumatoid arthritis was and how much it bothered the claimant before his injury is in dispute. The claimant contends his claimed additional conditions were either caused or aggravated by his compensable fall. There was conflicting evidence including testimony which conflicted with the medical reports.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the fact finder, the hearing officer was charged with the responsibility of resolving the conflicts and inconsistencies in the evidence and deciding what facts the evidence had established. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer was acting within her province as the fact finder in resolving the conflicts and inconsistencies in the evidence against the claimant. Nothing in our review of the record reveals that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb those determinations on appeal.

The hearing officer made 46 findings of fact. The carrier contends that each finding not specifically appealed "should be considered final." We disagree. Issues that are not timely appealed become final by operation of law. Section 410.169. As long as the ultimate conclusion of law is disputed the underlying findings of fact do not become final as not being specifically appealed.

The hearing officer's decision and order on both issues are affirmed.

The true corporate name of the insurance carrier is **FREMONT INDUSTRIAL INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Susan M. Kelley
Appeals Judge